

Volume 1

Pages 1 - 20

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

UNITED STATES OF AMERICA,)

Plaintiff,
)

NO. 18-CR-577

MICHAEL RICHARD LYNCH, ET AL.,)

Defendants.)

San Francisco, California
Wednesday, January 10, 2024

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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(Appearances continued next page.)

Reported By: Jennifer Coulthard, CSR No. 14457, RMR, CRR, FCRR
Official U.S. District Court Stenographer

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Official U.S. District Court Stenographer

1 Wednesday - January 10, 2024

11:16 a.m.

2 P R O C E E D I N G S

3 ---oo---

4 **THE CLERK:** Calling criminal action CR18-0577. USA
5 versus Michael Richard Lynch and Stephen Keith Chamberlain.

6 **THE COURT:** May we proceed? I'm waiting for my memo,
7 but everybody can introduce themself.

8 **MR. LEACH:** Good morning, Your Honor; Robert Leach on
9 behalf of the United States. I'm here with Adam Reeves,
10 Kristina Green and Zach Abrahamson.

11 **THE COURT:** Okay.

12 **MR. MORVILLO:** Good morning, Your Honor; Chris
13 Morvillo for Defendant Michael Lynch who is present in the
14 courtroom along with Reid Weingarten.

15 **THE COURT:** Good morning.

16 **MR. LICENBERG:** Good morning, Your Honor; Gary
17 Licenberg for Mr. Chamberlain, who is present by Zoom.

18 **THE COURT:** Okay.

19 **MR. LICENBERG:** And thank you for allowing him to
20 appear by Zoom.

21 **THE COURT:** Sure. Sure. I'm waiting for my memo, so
22 I've read it. I've read them all. In order to eliminate some
23 of the suspense that must be -- it's palpable in the courtroom
24 right now, I'm denying all of your motions.

25 It appears to me that with the exception of the nine

1 items -- and I'll get to that in a minute -- these problems can
2 be satisfactorily addressed and have been satisfactorily
3 addressed by the pleadings and the discovery to date.

4 With respect to the nine, quote, "new items,"
5 they're -- you have to put that in quotes because they're not
6 entirely new. What they are, as I understand them, is items
7 that hadn't been used in the *Hussain* case; and I don't know
8 whether they came up in the British case or not, but they're
9 not really unknown.

10 And the reason I'm going to allow them is because I
11 have enough experience knowing that when you try a case against
12 a new defendant substantially later than the earlier case, it's
13 not simply going to be a retread of what the preexisting trial
14 was. You don't just phone it in and have the same evidence and
15 the same witnesses and the same this and the same that. This
16 is not a retrial; it is a new trial.

17 And Dr. Lynch's position is certainly different, very
18 different from Mr. Hussain's position. My guess is that's a
19 pillar of your defense. And so to say to the government, well,
20 you're really hamstrung here, just do what you did the last
21 time and nothing new and we're just going to mete it on the --
22 you know, we're going to fight the old battle once again I
23 think is fundamentally unfair.

24 Now, you say: Oh, well -- because it's your position
25 that this is unfair to you. I don't think it is unfair. I

1 think you do have adequate time to prepare. I think you have
2 adequate resources to devote to it to prepare, so I'm not going
3 to foreclose the government from their -- from using that
4 information subject to whatever motions in limine you people
5 file, if you haven't filed them already. I don't know whether
6 you have or not.

7 **MR. LEACH:** They're due next week, Your Honor.

8 **THE COURT:** Yeah. I haven't read anything.

9 And subject to, you know, visiting them on some other
10 basis but not on the: Oh, this isn't part of the deal. This
11 isn't -- you know, we're not prepared to do it.

12 You know what? I guarantee you you'll be prepared to
13 do it. If I know one thing -- and maybe that's arguable
14 whether I do or not, but I don't think you'll disagree --
15 you'll be prepared for this trial. You'll be plenty prepared
16 for this trial.

17 And maybe you don't think so, because no lawyer I know
18 just feels that they've got it all in hand before they walk in
19 to the trial, but I've got a sense that you'll be prepared, and
20 it's more than just a sense. I've seen this now for years, and
21 I know you guys. I know you. You're not going to walk into a
22 trial not having prepared it. There's no way. And I just have
23 to say that I -- look, there's no reason for you to get into
24 motivations or whether I'm skeptical of arguments and so forth.
25 Makes no difference. Makes no difference. I don't -- I

1 understand why you made the motion. Fine. You lost the
2 motion. Fine. Let's move on because this case is going to
3 trial on the date that I said it's going to go to trial. So
4 everybody get ready. If you have to put some more people on,
5 put some more people on, but we're going to trial. Going to
6 trial.

7 And Mr. Morvillo, you really don't want to have to say
8 anything, but I'll -- you know. You sure can, but, I mean,
9 what's the point? I mean, my mind is made up. I tell you when
10 my mind is made up and I tell you when it's not made up, and
11 it's made up. It's made up. But go ahead, because I'd like to
12 hear what you have to say, if you want to say something.

13 **MR. MORVILLO:** I appreciate the candor, and I do
14 understand that your mind is made up, Judge. When we first
15 appeared here back in June, we were staring at a constellation
16 of 16 million documents that were being produced in discovery.
17 The whole purpose of the pretrial process was to provide fair
18 notice to be able to narrow the universe of those documents
19 that we were going to have to confront; the deals, the
20 transactions, the allegations, et cetera.

21 We got extended witness lists, we received and
22 negotiated a bill of particulars in October that had the effect
23 of focusing on the constellations that we were going to need to
24 address, and we prepared on that basis.

25 Then the government has, with their 12,000-exhibit

1 exhibit lists and their 124 new transactions or 103 new
2 transactions -- not 9, 103 new transactions -- reversed the
3 telescope on us and expanded the universe of allegations and
4 transactions that we're going to have to confront. Many of
5 them are new to us.

6 Add to that the fact that we're still missing millions
7 of pages of discovery. They've been produced to us, but we
8 don't have access to them because they have to be uploaded and
9 processed and reviewed.

10 Some of it may be familiar to us from the civil case
11 or from the Hussain trial, but we don't know.

12 I do know that there are documents that I've seen just
13 based on the names of the files that were -- that are things
14 that I don't think we've seen before; documents relating to a
15 whistleblower named Mr. Hogenson, Brent Hogenson, that seemed
16 to be in these documents -- I don't know what's there --
17 documents relating to deals that are now on this new bill of
18 particulars.

19 **THE COURT:** But you have the documents now?

20 **MR. MORVILLO:** We have them, but we don't have access
21 to them because they have to be uploaded and processed. I
22 don't think we're going to be able to --

23 **THE COURT:** The whistleblower's document, that file,
24 explain to me why -- tell me what the situation is as an
25 example.

1 **MR. LEACH:** Your Honor, we've produced thousands of
2 documents.

3 **THE COURT:** I know everybody's produced 12 billion
4 documents. Now, just explain to me --

5 What Mr. Morvillo is saying is that there is a
6 whistleblower, an alleged whistleblower, and there's a file and
7 they haven't been able to upload it or download it or looked at
8 it or whatever the term is. Is there some issue with that?

9 **MR. LEACH:** As I understand the issue, Your Honor, the
10 government produced documents electronically to the
11 defendant -- to Defendant Chamberlain when he made his
12 appearance and then to Dr. Lynch when he made his appearance.

13 **THE COURT:** Right.

14 **MR. LEACH:** There was some technical issue with
15 approximately 3.3 million files. I was alerted to that issue
16 in November of 2023. I believe we have made substantial
17 efforts to try to resolve that issue.

18 I hear Mr. Morvillo saying he has the files now. They
19 need to be uploaded and put on a computer and processed so they
20 can be viewed in a way. And what I hear Mr. Morvillo saying is
21 that they've done some preliminary look at some of the files,
22 and they appear to relate to a whistleblower that they hadn't
23 seen before. I don't know what he's talking about
24 specifically. We've produced thousands of documents from
25 whatever source we get them for the whistleblower.

1 And I don't hear them asking for -- to move the trial,
2 Your Honor. What they do is, they want to delay Mr. Geall's
3 deposition.

4 **THE COURT:** I'm not delaying any depositions. That's
5 not going to happen.

6 **MR. LEACH:** We have been working to resolve whatever
7 technical issues they have.

8 **THE COURT:** Well, why isn't the idea that your
9 technical person sit down with their technical person and see
10 whether they can -- with some requests -- I mean, if the
11 request is, well, please, we're having a problem with 12
12 million documents, that's not going to be useful; but if they
13 say: Here is a particular file that you've identified, we
14 can't see it, or we're having a problem seeing it, then they
15 work on that where they help you -- they help the defense see
16 it, if they haven't seen it. That's one approach.

17 A second approach is simply to get out a updated
18 witness list, a witness list and an exhibit list because, in my
19 experience, that there maybe X million documents, and believe
20 me, X million documents aren't going to be shown to the jury.
21 Whoever tries to show X million documents to the jury is going
22 to lose the case. They're certainly going to lose the judge.
23 So that's not going to happen.

24 The government is going to have a very, very
25 manageable, finite number of documents that will either prove

1 or not prove Dr. Lynch's culpability. That's what will happen.

2 And Mr. Chamberlain, that's what will happen. I know
3 it. That's the way it works. It works in every case.

4 So get them -- if they don't have it, get them as
5 up-to-dated exhibit list as you can.

6 And maybe what you have to do is supplement your
7 witness list on a -- every other day. I don't know. You're
8 preparing your case. It's now January. It's roughly two
9 months away from the trial roughly, so maybe every three days
10 if you have a change in your -- either your witness list or
11 your exhibit list, you change it.

12 And I know that's, quote, "somewhat chaotic" for the
13 defense because it's a moving target, but, on the other hand,
14 it is fair to say that the government doesn't make its election
15 of witnesses until after they've been thoroughly interviewed
16 and prepared for trial and they see what they have. And I
17 understand that, but I assume that process has been ongoing,
18 one; and two, you've already had one shot at a number of these
19 witnesses, so it's no surprise how they're going to testify.

20 **MR. LEACH:** Just to respond, Your Honor, we're happy
21 to do that, and we have been doing that. We've been responding
22 to every technical issue that the defense raises with us in
23 good faith.

24 We -- in Hussain we actually tiered the witnesses:
25 Who's most likely to be called, who's least likely to be

1 called. We're happy to do that for the defense, and we're
2 happy to update as frequently as need be, and we've been
3 attempting to confer with the defense about that.

4 **MR. MORVILLO:** Your Honor, the missing discovery, it's
5 been produced to us. They have given us the documents. We are
6 now in the process -- it's a lot of material -- of trying to
7 get it on to a database so that we can look at it.

8 My understanding is, it's going to be another week or
9 two before we're even in a position to do that, so now we're
10 walking into depositions with one hand tied behind our back.
11 We are -- we are, you know, six weeks away from trial by the
12 time we actually get these documents.

13 **THE COURT:** Are the exhibits that you intend to use in
14 your deposition, are they -- have they been disclosed? How is
15 that working? Because it's an odd -- the depositions are --
16 maybe I said something about it. Maybe I should know more
17 about this or something.

18 But to take a deposition, one, is unusual; two, it's a
19 substitute for trial testimony. So, in other words, that which
20 is being shown to a witness or upon which the witness is
21 expected to provide testimony has to be known to both sides.
22 So is this -- is this a -- is this hanging out there? Nobody
23 knows what the witness is going to be asked in terms of
24 documents.

25 **MR. LEACH:** No, Your Honor. The exhibits we intend to

PROCEEDINGS

1 use with Mr. Geall are on the exhibit list that the defendants
2 have. There's no surprise about those. And we've volunteered
3 to give them notice three business days before the deposition
4 of what's going to be used.

5 **MR. REEVES:** One week.

6 **MR. LEACH:** One week from today.

7 **THE COURT:** Okay.

8 **MR. MORVILLO:** Your Honor, there's 12,000 documents on
9 the exhibit list.

10 **THE COURT:** I understand, but they're going to say
11 witness X --

12 **MR. REEVES:** Yes.

13 **THE COURT:** -- who is being deposed -- as I understand
14 the process, and tell me if I'm wrong -- Jones is going to be
15 deposed next week, seven days from now. Here are the exhibits
16 we are going to show Jones.

17 I don't care whether there are 50 billion documents on
18 the list. They're not going to go through and have to identify
19 for your purposes every document that maybe you would want to
20 use in terms of a cross-examination of a witness.

21 And I'm -- you know, I appreciate the problem that you
22 don't have that there's so many documents out there that may be
23 of relevance that you find it difficult to conduct the
24 examination. I don't know whether you will or not. I mean, I
25 think the proof will be in the pudding.

1 And by the way, you come across something and -- later
2 on and it appears that you didn't have access to it or that
3 somehow it's unfair in terms of the witness's examination, then
4 I would consider limiting that witness's testimony on that
5 subject.

6 **MR. MORVILLO:** Well, that's really the point, Judge.
7 It's not a question of not having received the exhibits from
8 the government. They've given us their list. I think it's
9 extraordinarily long. They'll give us the exhibits that they
10 intend to use. What I don't know is whether there's documents
11 that we're going to find after these documents get uploaded and
12 after this deposition that we would have wanted to inquire
13 about. That's --

14 **THE COURT:** I got it. But I'm not going to wait until
15 the second coming for you to find out whether there are
16 documents out there that maybe you want to use or could have
17 used. I got it. It's sort of like life's not perfect, you
18 know, you --

19 **MR. MORVILLO:** It's a question of fairness, Judge,
20 right?

21 **THE COURT:** Well, I understand it's a question of
22 fairness. It doesn't seem to be unfair at this point. Okay?
23 Let me put it that way. It's not unfair if something --

24 If something happens during the course of the
25 deposition or trial that you believe renders the testimony

1 unfair, I'll examine it at that time. What more can I do?

2 I mean, yes, I can do a lot more -- I got that -- but
3 I'm not going to do that which I can do. I'm doing that which
4 I think is consistent with the requirements of due process in
5 this case. There we are.

6 Okay, everybody.

7 **MR. LICENBERG:** Your Honor --

8 **THE COURT:** Yes.

9 **MR. LICENBERG:** -- can I briefly --

10 **THE COURT:** Yes. Mr. Lincenberg.

11 **MR. LICENBERG:** -- briefly be heard on the same thing.
12 With all due respect, I do think that there's is an unfairness
13 that's difficult for the Court to fathom.

14 Number one, I don't have unlimited resources and, you
15 know, we filed a bill of particulars two years ago and the
16 basis for it was: Judge, my client's an accountant. He does
17 thousands of different decisions and judgments within a year.
18 We just want to know what we're going to go against, because
19 the only way I can deal with a lack of resources is by
20 preparing well ahead of time. And at the time two years ago
21 the Court said: Lincenberg, you know, your motion is well
22 taken.

23 The government said our case is going to be the
24 transactions in the Hussain trial. You've kind of said there
25 you go, you know, we had highly detailed trial and testimony at

PROCEEDINGS

1 that trial and it undercuts any arguments about the need to
2 clarify. We prepared accordingly.

3 When we get these huge dumps of documents and then
4 even the exhibits and then the Bates numbers don't match up and
5 you get people trying to load them -- and I've tried to
6 prepare, for example, for the depositions in the UK well ahead
7 of time so that I'd be prepared. I'd use the bill of
8 particulars that they filed a couple of months ago, which I
9 already thought was expanded. We used that. My guy, who's
10 helping me, goes out on paternity leave and you're scrambling
11 and all of a sudden the bill of particulars doubles in size.

12 And remember, with Rule 15 depositions I'm
13 shadowboxing. I'm thinking what can I or what should I be
14 asking this witness who's going to -- testimony is going to be
15 presented eight weeks into a trial to rebut things I don't even
16 know that come up.

17 **THE COURT:** That happens. I'm not a big fan of Rule
18 15 depositions. You've asked for one, if I recall correctly.

19 **MR. LICENBERG:** I did.

20 **THE COURT:** So they're shadowboxing. So no. It's not
21 great. It's not a preferred system of adjudication of facts
22 and so forth, but it's the reality of where people aren't
23 amenable or -- amenable I think is absolutely the right word --
24 amenable to the jurisdiction of the Court, and that's the
25 alternative. I don't like it particularly --

1 **MR. LICENBERG:** It's not --

2 **THE COURT:** -- but I'm just trying to figure out -- I
3 don't know. I mean, I appreciate your resources are far more
4 limited than your codefendant's resources -- I understand
5 that -- but I'm not quite sure, one, that you can't take some
6 advantage of his extensive resources. I assume you have some
7 sharing arrangement; at least it looks like you all get along
8 reasonably well, as I would expect, and --

9 **MR. LICENBERG:** It's not just focused on the
10 depositions. In the middle of all of this we have motions in
11 limine. There's all sorts of new things coming.

12 **THE COURT:** Well, take it up with the motions in
13 limine.

14 **MR. LICENBERG:** Well, there's -- I'll leave it at
15 that. I do think there's an unfairness, and I'm not casting
16 any aspersions on the government -- they're trying their
17 best -- but this is the most difficult trial to prepare for
18 that I've ever dealt with --

19 **THE COURT:** Really?

20 **MR. LICENBERG:** -- because of the mass complexity of
21 it and the fact that the number of transactions is just growing
22 by the day.

23 **THE COURT:** A bit of an exaggeration; growing by the
24 day?

25 **MR. LICENBERG:** Not when the transactions that were

1 identified have, what, tripled in the dollar volume that's now
2 involved?

3 **THE COURT:** Okay.

4 **MR. LICENBERG:** It's a pretty massive growth.

5 **THE COURT:** Didn't I simplify the case immeasurably by
6 dropping Count 17?

7 **MR. LICENBERG:** Not -- not with respect to my client.

8 It was -- we appreciated it, Your Honor, but I'm just saying
9 that --

10 **THE COURT:** Right.

11 **MR. LICENBERG:** -- we're trying to figure out what to
12 defend against.

13 **THE COURT:** I got it. It's not your client. I
14 understand that. I understand that. I was just using you as a
15 springboard to voice that opinion.

16 Well, everybody, it's never satisfactory to any of the
17 lawyers to hear the judge say do your best. Do your best. I'll
18 see you back here motions in limine.

19 **MR. LICENBERG:** Don't kick us out yet. Couple more
20 points to raise.

21 **THE COURT:** Okay.

22 **MR. MORVILLE:** Your Honor --

23 **THE COURT:** We finished this issue. I don't want to
24 go back to this issue.

25 **MR. MORVILLE:** Just one small point.

1 **THE COURT:** Small point.

2 **MR. MORVILLO:** Small point. We filed our expert
3 report before they gave us 103 additional transactions and a
4 new theory of fraud based on something called "organic growth."
5 I think it would be fair for our expert at least to have an
6 opportunity to respond, if necessary, to those new allegations.
7 They should have been disclosed --

8 **MR. LEACH:** No objection.

9 **THE COURT:** No objection. So there. Congratulations,
10 Mr. Morvillo. That small point carried the day.

11 **MR. MORVILLO:** I told you it was a small point.

12 **MR. LICENBERG:** Okay. Two small items, Your Honor.
13 Different points.

14 **THE COURT:** Are they as small as the last?

15 **MR. LICENBERG:** Medium. Medium.

16 **THE COURT:** Medium sized. Okay.

17 **MR. LICENBERG:** Medium small. First, there's a jury
18 questionnaire that the Court asked us to provide.

19 **THE COURT:** Yes.

20 **MR. LICENBERG:** We provided a draft. Counsel got back
21 to me in the last day or so. We're not in agreement. We may
22 try to talk later this afternoon. I think the Court wanted it
23 by today or tomorrow. It may be a couple of days until we
24 can --

25 **THE COURT:** That's fine, but get it to me so I can

1 give some thought to it.

2 **MR. LICENBERG:** Okay. Because you may be getting two
3 different versions to decide.

4 **THE COURT:** Well, I can get two different versions. I
5 can get two different versions. That's okay.

6 **MR. LICENBERG:** Perhaps if we do, maybe we could even
7 get on a quick Zoom to discuss the reasoning or the arguments
8 between -- that -- for the --

9 **THE COURT:** Oh, I think I -- I think I want to look at
10 it first --

11 **MR. LICENBERG:** Sure.

12 **THE COURT:** -- before I figure out whether --

13 **MR. LICENBERG:** Sure.

14 And second -- this I'll put in a small point
15 category -- we have subpoenas to a few of the Deloitte
16 witnesses whom the government assisted in helping get them to
17 accept subpoenas.

18 I sent an on-call agreement to their counsel asking --
19 I said normally it's 24, 48 hours, I'll give you 72 hours and
20 I'll try to even give you as much time as possible since you're
21 coming from England.

22 Counsel responded to me by saying, you know, with all
23 due respect, we don't need an on call agreement; our people
24 will be available.

25 You know, I don't want -- if I don't have an on call

1 agreement, I don't want the Court to say to me at some point:
2 Lincenberg, you should have had the person show up on the first
3 day of trial.

4 **THE COURT:** Subpoena them here whenever you want them
5 subpoenaed here and I'll order them to -- they'll be on my
6 on call agreement.

7 **MR. LICENBERG:** Okay.

8 **THE COURT:** They get their choice. They either agree
9 to your on call agreement --

10 Tell them that, with all due respect to Deloitte's
11 counsel. Tell them that there are two types of agreements we
12 have in the United States, one is yours and one is mine and
13 they get the choice.

14 **MR. LICENBERG:** Thank you, Your Honor.

15 **MR. LEACH:** Your Honor, shall we get you the jury
16 questionnaire on Friday, would that --

17 **THE COURT:** Yeah, that's fine.

18 **MR. LEACH:** Okay.

19 **THE COURT:** Now, that's it?

20 **MR. LEACH:** Nothing from the government.

21 **MR. LICENBERG:** That's it.

22 **THE COURT:** Thank you. We're in recess.

23 **MR. REEVES:** Thank you, Your Honor.

24 (Concluded at 11:42 a.m.)

25 ---oo---

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3 **CERTIFICATE OF REPORTER**

4 I certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled matter.
6
7

JENNIFER L. COULTHARD, RMR, CRR
Official Court Reporter
CA CSR#14457

January 13, 2024
DATE

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